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**Lina Yap Ai Lin (f) v Giant Rewards Sdn Bhd & Ors**

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL  
NO Q-02(NCvC)(A)-281-02 OF 2022  
AZIZAH NAWAWI, VAZEER ALAM AND SEE MEE CHUN JJCA  
29 NOVEMBER 2022

C

*Companies and Corporations — Section 351 Companies Act 2016 ('CA') — Whether s 351 empowered court, in view of company's breach of CA, to compel company to deliver up to plaintiff documents she had asked for — Plaintiff discovered from company search that without her knowledge she had resigned as director and transferred her shares to co-director — Company refused to furnish her documents evidencing the resignation and share-transfer and told her to obtain copies of same from Companies Commission of Malaysia ('CCM') — Whether company had not, in fact, lodged the said documents with CCM — Whether company and directors had made false and misleading statements in breach of ss 591 and 593 of CA — Whether plaintiff's application was properly made under s 351 to compel company and its directors to give her the documents she had asked for*

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The appellant was a shareholder and director in the first respondent ('R1') since 2017. At all material times, the second and third respondents were also directors of R1 whilst the fourth respondent was its secretary. In July 2021, the appellant discovered from a Companies Commission of Malaysia ('CCM') search to her surprise that she had resigned as director of R1 on 31 May 2018 and had ceased to be a shareholder on 16 June 2018 pursuant to a voluntary transfer of all her 25,000 shares in R1 to the third respondent ('R3'). When the appellant found that she could not obtain from the CCM e-system copies of documents that evidenced her supposed resignation and transfer of shares, she requested R1 for the same but her request was turned down. The appellant then filed an originating summons ('OS') against the respondents under s 351 of the Companies Act 2016 ('the CA') for an order that they jointly and/or severally furnish her with: (a) the original copy of the resignation letter and all related documents or instruments she had allegedly signed to relinquish her directorship in R1; and (b) all original instruments she had allegedly signed to effect the transfer of her 25,000 shares in R1 to R3. The judicial commissioner ('JC') dismissed the OS holding that all the documents/instruments the appellant sought for had already been filed with the CCM and that the appellant could obtain the relevant copies from CCM by paying the prescribed fees. The JC also held that s 351 of the CA was not applicable as there was no proof of any past, present or future contravention of the CA by any person. In the instant appeal against the decision, the appellant argued, inter alia, that she

had no alternative but to file the OS because the documents/instruments she wanted were not filed with the CCM as alleged although ss 105(1) and 208(2) of the CA mandated that they should have been filed.

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**Held**, unanimously allowing the appeal and setting aside the JC's decision:

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- (1) Section 351 of the CA was applicable in the present case because there was a contravention of ss 591 and 593 of the CA which required the respondents to furnish true and accurate statements with regard to R1. Making false and misleading statements about the appellant's resignation and share-transfer was an offence. This, therefore, was the contravention of the law within the meaning of s 351(1) of the CA (see paras 22 & 25).

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- (2) The appellant was effectively deprived of her rights as director and shareholder in R1, where she was previously a director and shareholder. She had no knowledge or recollection of resigning as a director or transferring her 25,000 shares in R1 to R3. It raised the serious question as to whether the documents pertaining to her resignation and the share-transfer supposedly lodged with the CCM were indeed true. Hence, the documents and/or instruments asked for were required to verify their genuineness. The appellant was a person whose interests had been affected by the respondents' refusal to provide her with the documents/instruments asked for. Section 351 of the CA was wide enough to compel the respondents to deliver up the said documents/instruments to the appellant (see paras 19–20, 23 & 25).

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- (3) The JC erred in finding that the documents/instruments sought by the appellant in the OS had been lodged with the CCM when in fact they had not been so lodged (as was evident from the exhibits annexed to the appellant's affidavit showing the results of her search with the CCM) such that the appellant could obtain copies of them by paying the prescribed fees. There was no other avenue for the appellant to obtain the documents/instruments other than by seeking them from the respondents, failing which she had to file the OS (see paras 27–35).

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**[Bahasa Malaysia summary]**

Perayu adalah pemegang saham dan pengarah dalam responden pertama ('R1') sejak 2017. Setiap masa yang material, responden kedua dan ketiga juga merupakan pengarah R1 manakala responden keempat adalah setiausahanya. Pada Julai 2021, perayu mendapati daripada carian Suruhanjaya Syarikat Malaysia ('SSM') mengejutkannya bahawa beliau telah meletak jawatan sebagai pengarah R1 pada 31 Mei 2018 dan telah berhenti menjadi pemegang saham pada 16 Jun 2018 menurut pemindahan sukarela kesemua 25,000 sahamnya dalam R1 kepada responden ketiga ('R3'). Apabila perayu mendapati bahawa beliau tidak boleh mendapatkan daripada e-sistem SSM salinan dokumen yang membuktikan beliau kononnya telah meletakkan

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- A jawatan dan pemindahan saham tersebut, beliau meminta R1 untuk perkara yang sama tetapi permintaannya ditolak. Perayu kemudian memfailkan saman pemula ('SP') terhadap responden di bawah s 351 Akta Syarikat 2016 ('AS') untuk satu perintah supaya mereka secara bersama dan/atau secara berasingan memberikannya: (a) salinan asal surat peletakan jawatan dan semua dokumen
- B atau instrumen berkaitan yang didakwa telah ditandatangani untuk melepaskan jawatan pengarahnya di R1; dan (b) semua instrumen asal yang didakwa telah ditandatangani untuk melaksanakan pemindahan 25,000 sahamnya dalam R1 kepada R3. Pesuruhjaya kehakiman ('PK') menolak OS
- C dengan memutuskan bahawa semua dokumen/instrumen yang diminta oleh perayu telah difailkan dengan SSM dan perayu boleh mendapatkan salinan yang berkaitan daripada SSM dengan membayar fi yang ditetapkan. PK juga memutuskan bahawa s 351 AS tidak terpakai kerana tiada bukti sebarang pelanggaran AS pada masa lalu, sekarang atau masa depan oleh mana-mana
- D orang. Dalam rayuan semasa terhadap keputusan tersebut, perayu berhujah, antara lain, bahawa beliau tidak mempunyai alternatif selain memfailkan OS kerana dokumen/instrumen yang dikehendaknya tidak difailkan dengan SSM seperti yang didakwa walaupun ss 105(1) dan 208(2) AS memberi mandat bahawa ianya sepatutnya difailkan.
- E **Diputuskan**, sebulat suara membenarkan rayuan dan mengetepikan keputusan PK:
- F (1) Seksyen 351 AS terpakai dalam kes ini kerana terdapat pelanggaran ss 591 dan 593 AS yang memerlukan responden untuk memberikan kenyataan yang benar dan tepat berkenaan dengan R1. Membuat kenyataan palsu dan mengelirukan tentang peletakan jawatan perayu dan pemindahan saham adalah satu kesalahan. Oleh itu, ini adalah pelanggaran undang-undang dalam pengertian s 351(1) AS (lihat perenggan 25 & 22).
- G (2) Perayu secara berkesan telah dilucutkan haknya sebagai pengarah dan pemegang saham dalam R1, di mana beliau sebelum ini adalah pengarah dan pemegang saham. Beliau tidak mempunyai pengetahuan atau ingatan untuk meletak jawatan sebagai pengarah atau memindahkan 25,000 sahamnya dalam R1 kepada R3. Ia menimbulkan persoalan serius sama ada dokumen berkaitan peletakan jawatannya dan pemindahan saham yang kononnya diserahkan kepada SSM adalah benar. Oleh itu, dokumen dan/atau instrumen yang diminta diperlukan untuk mengesahkan keasliannya. Perayu adalah orang yang
- H kepentingannya telah terjejas oleh keengganan responden untuk memberikannya dokumen/instrumen yang diminta. Seksyen 351 AS cukup luas untuk memaksa responden menyerahkan dokumen/instrumen tersebut kepada perayu (lihat perenggan 19–20, 23 & 25).
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- (3) PK terkhilaf dalam membuat dapatan bahawa dokumen/instrumen yang diminta oleh perayu dalam SP telah diserahkan kepada SSM sedangkan ia sebenarnya tidak diserahkan (seperti yang terbukti daripada ekshibit yang dilampirkan pada affidavit perayu yang menunjukkan keputusan carian dengan SSM) supaya perayu boleh mendapatkan salinannya dengan membayar fi yang ditetapkan. Tiada jalan lain untuk perayu mendapatkan dokumen/instrumen selain daripada mendapatkannya daripada responden, jika gagal beliau terpaksa memfailkan OS (lihat perenggan 27–35).]

#### Cases referred to

*Wong Kien Ching v Seng Kim Huat & Anor* [2018] MLJU 1910; [2019] 7 CLJ 356, CA (refd)

#### Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) s 368A  
Companies Act 2016 ss 51, 58, 105(1), 208(2) 351, 351(1), 591, 593, 601  
Rules of Court 2012 O 24 r 7A

**Appeal from:** *Lina Yap Ai Lin v Giant Rewards Sdn Bhd & Ors* [2022] MLJU 1626 (High Court, Kuching)

*Wong King Wei (with Teng Lee Kai) (King Wei & Co) for the appellant.*  
*Clement Wong Teck Hoo (with Then Siaw Lian) (Clement & Co) for the respondent.*

#### See Mee Chun JCA:

#### INTRODUCTION

[1] The appellant/plaintiff had filed an originating summons ('OS') on 24 September 2021 to seek the following documents and/or instruments:

1. The 1st Defendant, 2nd Defendant, 3rd Defendant and 4th Defendant are hereby ordered jointly and/or severally to furnish the Plaintiff with the Original copy of the Resignation Letter and all such documents or instruments allegedly signed by the Plaintiff to relinquish her directorship in Giant Rewards Sdn. Bhd. (Co. No. 201501038362/1163683-W) for the Plaintiff's record;
2. The 1st Defendant, 2nd Defendant, 3rd Defendant and 4th Defendant are hereby ordered jointly and/or severally to furnish the Plaintiff with all the Original instruments allegedly executed by the Plaintiff in effecting the transfer of the Plaintiff's 25,000 shares in Giant Rewards Sdn. Bhd. (Co. No. 201501038362/1163683-W) to the 3rd Defendant for the

A Plaintiff's record;  
...

B These documents and/or instruments will be collectively referred to as the documents and/or instruments.

[2] The OS was dismissed by the High Court. We allowed the appeal and we now give our reasons.

C PARTIES

D [3] The appellant was a shareholder and director to the first respondent company since 2017. The second and third respondents are the current directors of the first respondent and the fourth respondent is the company secretary.

BACKGROUND FACTS

E [4] On 30 July 2021, the appellant discovered from a search of the records of the Companies Commission of Malaysia ('CCM') dated 30 July 2021 that she had ceased to be a director of the first respondent on 31 May 2018 with her resignation (encl 5/10–11). The same search revealed that she had also ceased to be a shareholder of the first respondent on 26 June 2018 pursuant to a voluntary transfer of all her 25,000 shares to the third respondent (encl 5/15–16).

G [5] Thereafter on 4 August 2021, the appellant obtained two documents namely Register of Member and Notification of Change in the Register of Directors, Managers and Secretaries. These documents essentially showed the information as stated above, namely the transfer of her 25,000 shares to the third respondent on 26 June 2018 (from the Register) and she had ceased to be a shareholder and the reason for her cessation as director was due to resignation (from the notification of change).

H [6] The appellant subsequently purchased various documents from the e-system of CCM. According to the appellant, as at 11 September 2021, the documents and/or instruments are not made available in the public domain of CCM. Refer to exh 'YAL29', encl 6/80.

I [7] The appellant through her advocates wrote to the first respondent and its secretary via letter dated 20 August 2021 for the supply of the documents and/or instruments but this was refused by letter dated 7 September 2021. Another letter dated 13 September 2021 ensued, as well as to the new secretary but nothing was forthcoming. On 23 September 2021, the respondents

through their advocate maintained their refusal to provide.

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[8] This impasse ultimately led the appellant to file the OS.

#### DECISION OF THE HIGH COURT

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[9] The judicial commissioner ('JC') found that s 351 of the Companies Act 2016 ('the CA') is not applicable where there is no evidence the provision had been contravened. Fraudulent involvement had only been alleged but no certainty was shown. There is a prerequisite to show contravention.

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[10] It was further found that the documents required by the appellant had been filed with CCM. As the documents have been lodged with CCM, the appellant need only pay the prescribed fees to obtain the documents. The appellant can inspect the documents under s 601 of the CA and get copies from CCM. If upon inspection, any particulars in any form or statement is false, the appellant can apply to the Registrar to rectify under s 602 where such decision is appealable.

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[11] It was also stated that s 351 of the CA cannot be invoked where there are other alternatives where the appellant can seek relief from.

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#### SUBMISSIONS OF THE APPELLANT

[12] It was submitted that the documents and/or instruments are not filed with CCM and not made available. On the contrary, these are mandated to be lodged with the first respondent as provided under ss 105(1) and 208(2) of the CA.

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[13] It need not be shown that s 351 of the CA has been contravened. The provision gives wide discretion and power to the court whether there is any contravention be it past, present or future. There were ample grounds for the discretion to be exercised where the appellant's interests have been seriously affected as she has been deprived of her shares and directorship and the respondent's conduct is subject to scrutiny and is required under CA to be maintained at the highest honesty and integrity.

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#### SUBMISSIONS OF THE RESPONDENTS

[14] It was submitted by the respondents that the documents and/or instruments sought are for the appellant's record only as may be seen in the reliefs sought and para 7 of the affidavit in support that the documents are for record and inspection to ascertain the genuineness and justification of the resignation and transfer and to ensure compliance of the law (para 11 of the

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A affidavit in support). There was therefore no allegation or proof of contravention of the law such that s 351 of the CA cannot be invoked.

B [15] It was further submitted that s 351 of the CA is only invoked if a person has engaged, is engaged or intends to engage in a conduct which is a contravention of the Act. The prerequisite has therefore not been met.

C [16] All particulars and the necessary forms have been duly lodged to CCM and in fact shown in the exhs 'YAL1' to 'YAL24' produced by the appellant. The change of directorship and shareholder has also been lodged as per the Register of Member and Notification of Change in the Register of Directors, Managers and Secretaries.

D [17] The application was more towards seeking pre-action discovery under O 24 r 7A of the Rules of Court 2012. There is no nexus with s 351 of the CA.

#### OUR DECISION

##### *Application of s 351 of the CA*

E [18] The application is grounded on s 351 of the CA which provides as follows:

##### 351 Injunction

F (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute —

- (a) a contravention of this Act;
- (b) an attempt to contravene this Act;
- G (c) an attempt that aids, abets, advises or procures a person to contravene this Act;
- (d) an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;
- H (e) an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) an attempt of conspiracy with others to contravene this Act,

I the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) If a person refused or failed, is refusing or failing, to do an act or thing that the person is required by this Act to do, the Court may, on the application of the

Registrar or any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the Court thinks appropriate, requiring the person who refused or failed, is refusing or failing, to do that act or thing.

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(3) The power of the Court to grant an injunction to restrain a person from engaging in conduct may be exercised whether or not —

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- (a) it appears to the Court that the person intends to engage again or to continue to engage, in conduct of that kind;
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage to any person if such person engages in a conduct of that kind.

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(4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not —

- (a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- (b) the person has previously refused or failed to do that act or thing; or
- (c) there is an imminent danger of substantial damage to any person if such person refuses or fails to do that act or thing.

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[19] We are of the considered opinion that there has been a contravention of the CA as alleged by the appellant where the act of the respondents falls within 'has engaged' or 'is engaging' in conduct; or in the words of the appellant's counsel, past or present contravention. In the factual matrix of this appeal, the appellant had sought the documents and/or instruments where she had no knowledge or recollection whether she had consented to her resignation or the transfer of her 25,000 shares. The appellant has deposed that it is beyond her knowledge and/or not within her recollection that she had consented to and/or submitted any resignation as director and/or consented to the transfer of the 25,000 shares at or around the material time between May to June 2018.

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[20] This therefore has raised a serious question as to whether the documents pertaining to her resignation as director and transfer of shares, which have been submitted to the CCM, are indeed true.

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[21] This in turn concerns the application of ss 591 and 593 of the CA as follows:

591 False and misleading statements

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(1) Every corporation which advertises, circulates or publishes any return, report, certificate, financial statements or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing which makes the

- A** document misleading in a material respect and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction —
- (a) in the case of a corporation, be liable to a fine not exceeding three million ringgit; and
- B** (b) in the case of officer of the corporation, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.
- (2) Every person who in any return, report, certificate, financial statement or other document required by or for the purposes of this Act —
- C** (a) makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false; or
- (b) misleads or intentionally omits or authorizes the omission or accession of any matter or thing making the document misleading in a material respect, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.
- D**
- (3) If a person at a meeting votes in favour of the making of a statement referred to in this section knowing it to be false, he shall be deemed to have authorized the making of that statement.
- E**
- 593 False report or statement to the Registrar
- A person who makes or furnishes, or knowingly authorizes or permits the making or furnishing of, any false or misleading statement, information or report to the Registrar relating to —
- F** (a) the affairs of a corporation;
- (b) any matter or thing required by the Registrar for the implementation of this Act; or
- G** (c) the enforcement of this Act, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.
- H** [22] A perusal of the above sections would show that the respondents are required to furnish true and accurate statements with regard to the first respondent company. False and misleading statements as to the appellant's resignation and transfer, amount to an offence. This therefore is the contravention of the law within the meaning of s 351(1) of the CA.
- I** [23] Reverting to the issue of the appellant's interests, effectively she has been deprived of her rights as director and shareholder in the first respondent, where she was previously a director and shareholder. Hence, the documents and/or instruments are required to verify their genuineness.

[24] It has been held by this court in *Wong Kien Ching v Seng Kim Huat & Anor* [2018] MLJU 1910; [2019] 7 CLJ 356 at p 366:

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[20] As was pointed out earlier, the respondents' application is pursuant to s 368A(1)(a) and (4). Section 368A(1)(a) deals with a situation where a person is alleged either to have engaged or intends to engage in conduct that constituted, constitutes or would constitute a contravention of this Act. In such a situation, the court is moved to grant an injunction requiring that person to do a particular act or thing.

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[21] What is important is that s 368A(1) may only be invoked by the Registrar or by a person whose interests is either affected or would be affected by such conduct. It is therefore imperative that the applicants who are the respondents in this appeal, state how the conduct of the respondent to the application, that is, the appellant, affect their interests. Where and when that element has been established, the court is then in the position to impose such terms as are appropriate when granting the relevant injunction.'

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Note: Section 368A of the Companies Act 1965 is *pari materia* with s 351 of the CA 2016.

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[25] We therefore find that there is a contravention of ss 591 and 593 of the CA as alleged by the appellant and s 351 can thus be invoked. The appellant is a person whose interests have been affected by the refusal of the respondents to provide the documents and/or instruments.

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[26] This is not a pre-action discovery for documents. Section 351 of the CA is wide enough to compel the respondents to deliver the production of the documents and/or instruments. In *Wong Kien Ching* what was sought was an injunction to deliver documents in the form of certain subleases. The OS does indeed have a nexus with s 351.

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*Whether the documents and/or instruments were lodged with CCM*

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[27] The JC had found that the documents and/or instruments were lodged with CCM and all the appellant had to do was to do apply for copies from CCM. We find that this was an error on a finding of fact which warrants our appellate intervention.

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[28] The documents and/or instruments sought are the original copies of her resignation as a director and all such documents signed by her and all the original instruments executed by her to transfer her 25,000 shares to the third respondent. From the appellant's search in CCM and her purchase of all relevant documents from CCM's e-system, it will be apparent that these documents are not lodged with CCM. The documents available to her are in exhs 'YAL1' to 'YAL24' encl 5. With reference to exh 'YAL29', encl 6/80, the appellant has shown that the documents filed with CCM which are in the

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A public domain and available to her are as follows:

B Company Name : GIANT REWARDS SDN. BHD.  
Company No : 201501038362 (1133683-W)

All the documents are available in CTC (Certified True Copy) and Standard

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| NO | DOCUMENT TYPE | DOCUMENT DESCRIPTION                                                                                                                  | DOCUMENT DATE | TOTAL PAGE | PRICE |
|----|---------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------|------------|-------|
| 1  | 6             | Declaration Of Compliance / S. 14 - Oupstream                                                                                         | 2015-10-26    | 1          | RM 10 |
| 2  | 11            | Notice Of Resolution                                                                                                                  | 2015-03-14    | 2          | RM 10 |
| 3  | 11            | Notice Of Resolution                                                                                                                  | 2015-12-01    | 2          | RM 10 |
| 4  | 24            | Return of allotment of shares / S. 28 - Return for allotment of shares                                                                | 2016-03-14    | 1          | RM 10 |
| 5  | 24            | Return of allotment of shares / S. 28 - Return for allotment of shares                                                                | 2015-10-27    | 1          | RM 10 |
| 6  | 44            | Registered office and Office hours / S. 46 - Notification for change in the registered address                                        | 2015-12-01    | 1          | RM 10 |
|    | 44            | Registered office and Office hours / S. 46 - Notification for change in the registered address                                        | 2015-10-27    | 2          | RM 10 |
| 8  | 49            | Register of directors, managers & Secretaries / S. 58 - Notification of change in the Register of Directors, Managers and Secretaries | 2018-05-12    | 2          | RM 10 |
| 9  | 49            | Register of directors, managers & Secretaries / S. 58 - Notification of change in the Register of Directors, Managers and Secretaries | 2017-01-26    | 3          | RM 10 |
| 10 | 49            | Register of directors, managers & Secretaries / S. 58 - Notification of change in the Register of Directors, Managers and Secretaries | 2016-10-27    | 3          | RM 10 |
| 11 | 49            | Register of directors, managers & Secretaries / S. 58 - Notification of change in the Register of Directors, Managers and Secretaries | 2015-12-01    | 3          | RM 10 |
| 12 | 53            | Notice Of Place Where Register                                                                                                        | 2015-12-01    | 1          | RM 10 |
| 13 | 102           | Memorandum And Articles Of Association / S. 32 - Lodgement of constitution                                                            | 2015-10-26    | 6          | RM 10 |
| 14 | 146           | Sec 51/Notification of Change In The Register of Members                                                                              | 2018-06-27    | 2          | RM 10 |
| 15 | 481           | Statutory Declaration                                                                                                                 | 2017-01-26    | 2          | RM 10 |
| 16 | 481           | Statutory Declaration                                                                                                                 | 2016-10-26    | 4          | RM 10 |
| 17 | 481           | Statutory Declaration                                                                                                                 | 2015-12-01    | 2          | RM 10 |
| 18 | 557           | Audited Financial Statement                                                                                                           | 2019-12-31    | 35         | RM 10 |
| 19 | 557           | Audited Financial Statement                                                                                                           | 2018-12-31    | 35         | RM 10 |
| 20 | 557           | Audited Financial Statement                                                                                                           | 2017-12-31    | 35         | RM 10 |
| 21 | 558           | Exempt Private Company                                                                                                                | 2016-12-31    | 4          | RM 10 |
| 22 | 558           | Annual Return                                                                                                                         | 2020-10-26    | 13         | RM 10 |
| 23 | 558           | Annual Return                                                                                                                         | 2018-11-19    | 13         | RM 10 |
| 24 | 558           | Annual Return                                                                                                                         | 2017-10-26    | 10         | RM 10 |

As shown above, the documents and/or instruments are not listed therein.

I [29] In para 4.3 of the grounds, the JC stated as follows:

4.3 Furthermore, the documents requested by the plaintiff had all been filed with

the SSM is the relinquishment of the directorship which was in June 2018 and this can be found in document No 8 dated 12 June 2018 — Notification of change in the Register of Directors, Managers & Secretaries. As to the change of shareholding which occurred on the 27 June 2018, Item 14 of the document which is the requirement under the law that this document needs to be lodged in the change in the register of members under s 51. Therefore, the documents have been lodged in SSM and the Plaintiff need only pay the prescribed fees to obtain the documents.

[30] Document No 8 referred to by the JC corresponds to exh 'YAL4', encl 5. This shows the following:

**COMPANIES ACT 2016**  
**Section 50**  
**NOTIFICATION OF CHANGE IN THE REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES**

| PARTICULARS OF COMPANY |                          |
|------------------------|--------------------------|
| Reference Number       | SP01195201879247         |
| Company Name           | GENIT BUKANPOS SDN. BHD. |
| Registration No.       | 1183603-VT               |

NO. Q190  
\* TIMOTHY CHUA YAW SEN \*  
06.06.2021 - 31.12.2023  
22 SEP 2021

| SECTION A - NEW DIRECTOR |                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------|
| Identification Number    | S30322135345                                                                                 |
| Name                     | HEGZAH WISU                                                                                  |
| Designation              | Director                                                                                     |
| Date of Birth            | 25/03/1953                                                                                   |
| Gender                   | Male                                                                                         |
| Race                     | CHINESE                                                                                      |
| Nationality              | MALAYSIAN                                                                                    |
| Business Occupation      | BUSINESS PM                                                                                  |
| Date of Appointment      | 11/01/2018                                                                                   |
| Residential Address      | LOT 145, BUKAN POS, 50000 KUALA KEMPUR MALAYSIA.                                             |
| Service Address          | A-2-6, TTDI PLAZA 2A, JALAN WANG KADIR 3, TANJUNG KUALA KEMPUR, 70100 KUALA KEMPUR MALAYSIA. |
| Email                    | hegzhawis@yaho.com                                                                           |

| SECTION C - CESSATION OF DIRECTOR |                 |
|-----------------------------------|-----------------|
| Identification Number             | 87050525726     |
| Name                              | LINA TAN ALI LI |
| Designation                       | Director        |
| Date of Cessation                 | 21/05/2018      |
| Cessation Reason                  | RESIGNATION     |

A

This only shows the change in directorship but is not the document sought namely the resignation signed by her as director.

B

[31] Document No 14 referred to by the JC corresponds to exh 'YAL3', encl 5. This shows the following:

| PARTICULAR OF SHAREHOLDERS |                     |                                                                |                  |                       |                              |                        |                            |
|----------------------------|---------------------|----------------------------------------------------------------|------------------|-----------------------|------------------------------|------------------------|----------------------------|
| Identification Number      | Shareholders Name   | Address                                                        | Number of Shares | Shares transferred in | Total Shares transferred Out | Total Number of Shares | Date of Transfer of Shares |
| 530322-13-5345             | NGU UNG WOO         | LOT 145, MILAN SALIM, 96000 SIBU SARAWAK MALAYSIA              | 0                | 25,000                | 0                            | 25,000                 | 26/06/2018                 |
| 850107-13-5206             | NANCY NGU CHIN CHIN | LOT 145, SALIM ROAD, 96000 SIBU SARAWAK MALAYSIA               | 25,000           | 0                     | 0                            | 25,000                 |                            |
| 870505-52-5726             | LINA YAP AI LIN     | NO. 170, LORONG 4, JALAN ARANG, 93250 KUCHING SARAWAK MALAYSIA | 25,000           | 0                     | 25,000                       | 0                      | 26/06/2018                 |

F

This document pertains to the change in shareholding but is not the instrument sought namely the instrument executed to effect the transfer.

G

[32] It was also said document No 14 has to be lodged pursuant to s 51 of the CA.

H

[33] In this regard, ss 51 and 58 of the CA provides a duty on the first respondent company to notify the Registrar of particulars and changes in the register of members (s 51) and of director, manager and secretary (s 58). This was done as per above. But these are not the documents and/or instruments in question.

I

[34] In fact, the documents and/or instruments are not lodged with CCM. This will be evident from ss 105(1) and 208(2) of the CA where such documents are lodged with the company itself. In this regard, those sections provide as follows:

105 Requirement for instrument of transfer

(1) Subject to other written laws, any shareholder or debenture holder may transfer all or any of his shares or debentures in the company by a duly executed and stamped instrument of transfer and shall lodge the transfer with the company.

208 Vacation of office of director

(2) Subject to subsection 196(3) and section 209, a director may resign his office by giving a written notice to the company at its registered office.

[35] The documents and/or instruments are not lodged with CCM such that it cannot be said the appellant could access them by paying the prescribed fees. There is no other avenue for the appellant to obtain the documents and/or instruments other than to seek them from the respondents, failing which the OS was filed.

CONCLUSION

[36] For the above reasons, we find merits in the appeal. We allow the appeal and set aside the decision of the JC. We award costs of RM10,000 to the appellant, subject to allocatur.

*Appeal allowed and JC's decision set aside.*

Reported by Ashok Kumar

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